

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GREGORY KUHN

Plaintiff-Appellant

-VS-

DELOISE KUHN

Defendant-Appellee

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 09-CA-00056

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Richland County Common
Pleas Court, Case No. 08DIV0010

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 24, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

PATRICK HEAGERTY
150 E. Mound St., Suite 301
Columbus, Ohio 43215

TOM COLE
Weldon, Huston & Keyser
76 N. Mulberry St.
Mansfield, Ohio 44902

Hoffman, J.

{¶1} Plaintiff-appellant Gregory Kuhn (“Husband”) appeals the March 10, 2009 Second Amended Decision and Order entered by the Richland County Court of Common Pleas, Domestic Relations Division, which ordered him to pay \$1300.00/month as spousal support for a period of ten years. Defendant-appellee is Deloise Kuhn (“Wife”).

STATEMENT OF THE FACTS AND CASE

{¶2} Husband and Wife were married on August 25, 1990. No children were born as issue of the union. On January 4, 2008, Husband filed a Complaint for Divorce in the Richland County Court of Common Pleas, Domestic Relations Division. Wife filed an Answer and Counterclaim on January 7, 2008. The trial court issued temporary orders and the matter proceeded through discovery. After several continuances, the matter came on for final hearing on February 25, 2009. The parties appeared on that day and informed the trial court they had stipulated and agreed to all financial issues except for the issue of spousal support. The hearing proceeded on that sole issue.

{¶3} Husband is a self-employed truck driver, who owns and operates a subchapter S corporation, “Gregory Kuhn Hauling, Inc.” Husband lives with a woman named Candy Wisenauer, but denies the two are engaged in an intimate relationship. Husband pays Wisenauer his personal expenses for living in her home as well as his business expenses for her housing his trucking business. Husband also subcontracts with Wisenauer for a portion of his trucking work. In 2006, Husband had net earnings of \$37,414, and in 2007, his net earnings increased to \$48,736. In 2008, Husband ceased

operations as a subchapter S corporation. His income in 2008, was \$42,517. During that year, Husband made payments to Wisenauer totaling \$51,658. Husband's payments to Wisenauer increased dramatically in the later half of the year. From January 1, 2009, to February 15, 2009, Husband paid Wisenauer \$2250, which annualizes on a monthly basis to approximately \$1500/month.

{¶4} Wife is 55 years old and has a high school education. She works seasonally as a bus driver. Wife works approximately 20 hours per week, earning \$12.52/hour. In 2008, Wife earned \$12,885.00, with a monthly gross income of \$1073.75. Wife has health insurance available to her.

{¶5} The parties enjoyed a middleclass standard of living while married. Husband was the primary breadwinner. Wife was forced to move out of the marital residence as Husband operated his trucking business on the premises. After Wife moved, Husband sold the property and moved in with Wisenauer.

{¶6} Husband and Wife were the only witnesses to testify at the hearing. Following the hearing, the trial court issued its Decision and Order on March 3, 2009, followed by an Amended Decision and Order on March 6, 2009, and subsequently by a Second Amended Decision and Order on March 10, 2009. The Second Amended Decision and Order ordered Husband to pay Wife \$1300/month as and for spousal support for a period of ten years. The trial court retained jurisdiction over the amount of the spousal support order, but not its duration. The obligation would terminate upon Wife's sixty-fifth birthday, or sooner upon the death of either party or Wife's remarriage or cohabitation with a member of the opposite gender. The trial court issued a final

Judgment Entry/Decree of Divorce on April 20, 2009, followed by a Nunc Pro Tunc Entry on May 4, 2009.

{¶7} It is from the spousal support order Husband appeals, raising as his sole assignment of error:

{¶8} "I. THE TRIAL COURT ERRED WHEN AWARDING THE APPELLEE SPOUSAL SUPPORT IN THE AMOUNT OF \$1300.00 PER MONTH FOR THE NEXT TEN YEARS."

I

{¶9} Herein, Husband maintains the trial court erred in awarding Wife spousal support in the amount of \$1300/month for a period of ten years. Husband submits the trial court did not accurately determine his income and improperly found he had funneled some portion of his trucking income through Candy Wisenauer. Husband submits the trial court's miscalculation of his income is reversible error.

{¶10} Before addressing the merits of Husband's assignments of error, we must discuss the state of the record before this Court.

{¶11} On the Docketing Statement accompanying his Notice of Appeal, Husband indicated a transcript of the proceedings was to be filed. However, the record reflects Husband failed to request a transcript pursuant to App. R. 9(B) or submit a statement of evidence pursuant to App. R. 9(C). The Notice of Filing Transcript sent to the parties' counsel noted: "Transcript of the Docket and All Original Papers have been filed in the Court of Appeals * * * Without Transcript of the Proceedings filed." The Notice was dated May 27, 2009. Husband did not take any action in response to the lack of the transcript of the proceedings.

{¶12} An appellant has the duty to provide this Court with the necessary transcripts of the record below in order to demonstrate any claimed error. See, App.R. 9; *State v. Feazel* (July 17, 2000), Delaware App. 00CA01001, unreported. When parts of the record necessary for the resolution of the assigned errors are omitted, there is nothing for the reviewing court to pass upon. *Id.* (Citations omitted). Thus, the reviewing court must presume the regularity of proceedings below and affirm. *Knapp v. Edwards Lab.* (1980), 61 Ohio St.2d 197, 199.

{¶13} Because the record lacks a transcript of the final hearing which would reflect whether the trial court's decision was against the manifest weight of the evidence, we must presume the validity of the lower court's proceedings and affirm.

{¶14} Husband's sole assignment of error is overruled.

{¶15} The judgment of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Delaney, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin

HON. W. SCOTT GWIN

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

GREGORY KUHN

Plaintiff-Appellant

-vs-

DELOISE KUHN

Defendant-Appellee

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JUDGMENT ENTRY

Case No. 09-CA-00056

For the reason stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin

HON. W. SCOTT GWIN

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY